Justice ("DOJ") requested the Commission to gather certain information in order to aid the DOJ in the Attorney General's evaluation of Ameritech's anticipated application for authorization to provide in-region interLATA services. Illinois Commerce Commission (On Its Own Motion), Ill. C.C. Docket No. 96-0404, Order Initiating Investigation, p. 2 (August 26, 1996) ("Order Initiating Investigation"). This docket was initiated by the Commission in order to properly discharge its role as consultant to the FCC and as an information gatherer for the DOJ on matters related to Ameritech's compliance with Section 271 Order Initiating Investigation, at. 3-4.

B. SECTION 271(c) REQUIRMENTS

Section 271(c) sets forth the preconditions for BOC entry into the in-region interLATA services market. 47 U.S.C. §271(c). As noted above, the 1996 Act requires the FCC to consult with this Commission in order to verify Ameritech's compliance with the requirements of Section 271(c). The preconditions under Section 271(c) are interrelated and consist of the following principal requirements. First, a BOC must establish the presence of at least one facilities-based competitor (serving business and residential customers) to which it is providing access and interconnection pursuant to an approved interconnection agreement, or that no such provider has requested access and interconnection and it is offering access and interconnection pursuant to a statement of generally available terms ("SGAT" or "statement") which a State commission has approved or permitted to take effect. 47 U.S.C. §271(c)(1)(A) and (B). Second, a BOC must establish that it "is providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A) [of Section 271(c)]," or that it "is generally offering access and interconnection pursuant to a statement described in paragraph (1)(B) [of Section 271(c)]," and that "such access and interconnection meets the requirements of [the competitive checklist] 47 U.S.C. §271(c)(2)(A).

The issues before the Commission in this matter are primarily issues of statutory interpretation of Section 271. Following is a discussion of the disputed provisions of Section 271.

C. "IS PROVIDING"

The Commission raised the issue of whether Ameritech must actually provide each checklist item in its Question No. 13. Ameritech maintains that a BOC "provides" a given checklist item pursuant to Sections 271(c)(2)(B) either by actually furnishing the item to carriers that have ordered it or by making available that item, through an approved interconnection agreement, to carriers that may elect to order it in the future. Ameritech contends that this construction of "provide" is mandated by the text, structure and legislative history of the Act; by standard dictionary definitions of "provide"; and by judicial decisions, from Illinois and elsewhere, that consistently interpret the statutory term "provide" to mean "make available" and reject contentions that the term means only "furnish" or "supply."

Ameritech also explained why Staff's and the interexchange carriers' contrary view — which holds that "provide" means exclusively "actually furnish" and not "make available" — would lead to absurd consequences that Congress could not possibly have intended. Were this contrary view adopted, Ameritech argues that it would be indefinitely barred from obtaining Track A relief if, through no fault of Ameritech, no competing carrier elected to purchase a given checklist item.

Staff takes the position that the most reasonable interpretation of the term "is providing" in Section 271(c)(1)(A) is that Ameritech actually must provide the access and interconnection on a commercial basis, in which the competing carrier is obtaining, using, and (where relevant) paying for the checklist item. Staff contends that Congress used the phrase "is providing" with respect to agreements under Track A, and the phrase "is generally offering" with respect to a statement under Track B. Staff contends that if Congress intended "provide" to mean "offer", it would not have used different terms to describe the same requirement with respect to agreements and statements.

Staff states that its position is further supported by the exception to the "no request" requirement in Section 271(c)(1)(B) for failure to implement an agreement. See 47 U.S.C. §271(c)(1)(B). Staff argues that Section allows a BOC to proceed under Track B and rely upon a statement if the only provider or providers making such requests have "violated the terms of an agreement approved under Section 252 by the provider's failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement." 47 U.S.C. §271(c)(1)(B). Accordingly, Staff states that if the standard were truly only "offer" or "make available", there would be little need for the exception to proceed under Track B as a BOC would be offering and making available the terms of any approved interconnection agreement irrespective of whether the competitive provider had implemented the agreement by taking the services provided thereunder.

Staff witness Charlotte TerKeurst also provided policy reasons to interpret the term "is providing" as Staff recommends. She testified that a host of problems and obstacles could prevent a carrier that has signed an interconnection agreement from actually receiving the services outlined in the contract. Further, she testified that Ameritech may have incentives to delay contract performance if it can obtain interLATA entry in the meantime. She also testified that an agreement may have checklist items in it that the new entrant does not seriously plan to use. If that is the case, she testified that the new entrant may not have bargained vigorously for the prices, terms, and conditions attached to the checklist item.

Ms. TerKeurst testified that, in order for Ameritech to meet the requirement that it is providing a checklist item, the competing carrier should be able to order and receive the item in sufficient quantities and in a manner that will allow it to provide service to its own customers on a commercial basis. Staff Ex. 1.01, at 9; Tr. 1442-1443. She further testified that the manner in which Ameritech provides the service should be adequate to meet the new carriers' need and should not hinder their ability to operate. Tr. 1507. The competing carriers should be able to do reasonable marketing and be able to sign up and provide service to the customers that respond to their marketing. Tr. 1508.

Staff also contends that its interpretation of "is providing" is consistent with the intent of Congress as expressed in the language of the Act. Moreover, Staff states that its interpretation is consistent with Congress' focus on the actual provision (rather than offering) of service to a facilities-based competitor pursuant to an approved agreement. Staff cites the Conference Report which notes that the facilities-based competitor requirement of Section 271(c)(1)(A) adopted by the conference agreement "comes virtually verbatim from the House amendment." H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 147 (1996). Staff further states that the basis for the House amendment was described in the House Report by the Committee On Commerce as follows:

Under Section 245(a)(2)(A) [which was eventually adopted as Section 271(c)(1)(A)], the Commission must determine that there is a facilities-based competitor that is providing service to residential and business subscribers. This is the integral requirement of the checklist, in that it is the tangible affirmation that the local exchange is indeed open to competition. In the Committee's view, the "openness and accessibility" requirements are truly validated only when an entity offers a competitive local service in reliance on those requirements.

* * *

> The Committee expects the Commission to determine that a competitive alternative is operational and offering a competitive service somewhere in the State prior to granting a BOC's petition for entry into long distance. The requirement of an operational competitor is crucial because, under the terms of section 244 [See Section 252(i)], whatever agreement the competitor is operating under must be made generally available throughout the State.

H.R. Rep. No. 104-204, 104th Cong., 1st Sess. 76-77 (1995).

Sprint contends, that as used in the Act, the word "providing" means actually furnishing the item to a competing carrier. Sprint agrees with Staff's construction of "to provide." Sprint asserts that the language of the Act supports this conclusion since throughout Section 271, Congress specifically and carefully distinguished between the active provision of access and interconnection required under Track A and the offering of access and interconnection required by Track B. Sprint points out that the legislative history indicates that Congress intended for new LECs to be "operational." S. Rep. No. 230, 104th Cong. 2d Sess. 148.

MCI also accepts the Staff's construction of "to provide" as meaning to provide on a commercial basis, and that the competing carrier is obtaining, using and (where relevant) paying for the checklist item.

COMMISSION CONCLUSION

It must again be noted that the Commission's role with respect to the Section 271 checklist is advisory in nature. Although, this Commission must make its own interpretation of "is providing" in order to develop a standard for determining whether the checklist is met, the main purpose of this Order is to advise the FCC and the DOJ with respect to the current state of competition in the State of Illinois. We believe that this Order accomplishes this mission.

The Commission is of the opinion that Section 271 must be read as a whole in order to determine the meaning of the words "is providing" in Section 271(c)(1)(A). In order for Section 271 to serve a purpose, it must provide a meaningful avenue for a BOC to eventually enter the long distance market. Furthermore, it must be interpreted in a manner that sets goals for the BOC to meet in order to achieve this result.

The interpretation of Section 271 offered by Staff and the IXCs would indeed indefinitely bar Ameritech from entering the long distance market. This is because, first of all, it is unlikely that facilities-based providers will ever request every checklist item and Staff acknowledges this. Second, under the interpretation of Staff and the IXC's "Track B" is not an option because Ameritech already has received requests for access and interconnection pursuant to "Track A."

Section 271(c)(1)(A) must be interpreted in a manner that allows Section 271 to make sense as a whole. The Commission does not believe that Congress conceived this section to bar a BOC from ever entering the interLATA market. This is an unreasonable result that would make a BOC's filing of a Section 271 application a worthless exercise. Accepting the interpretation of Staff and the interexchange carriers ("IXC") of Section 271(c)(1)(A) would also result in removing the inherent incentive that the checklist provides for Ameritech to facilitate local competition.

In addition, we feel that Congress did not intend to place the power to allow a BOC to enter the interLATA market in the hands of its competitors. Read as a whole, Section 271 places incentives on the BOC to make its best effort to meet the checklist. In fact, this "carrot and stick" approach is working extremely well in Illinois. The record indicates that Ameritech has worked a fast pace to put in place the various checklist items.

We agree with Ameritech that the term "provide" in Section 271(c)(2)(B) means either "actually furnish" or "make available." We, however, go further than Ameritech as to the meaning of "making available." We will deem an item "available" only when we find with substantial certainty that each of following standards are met with respect to a given checklist item:

1. the item is currently available and can be ordered immediately and the competing carrier can receive, within a reasonable time, the item in sufficient quantities and in a manner that will allow it to provide service to its own customers on a commercial basis;

2. all systems necessary are in place allowing Ameritech to immediately provide said item and in instances where said item has been ordered or requested it is actually being furnished;

3. if applicable, all testing necessary has been completed with respect to said item;

4. this Commission is substantially certain that the checklist item will function as expected;

5. said item can be provided to the requesting party on a non-discriminatory basis and at a quality level that is at parity with the quality that Ameritech itself receives;

In essence, for this Commission to consider that a particular checklist item is being provided immediately, there must be little doubt that the item can be provided without glitches or problems.

Our interpretation of "is providing" is consistent with the fact that a "Track B" exists. Congress was clearly content with allowing a BOC to enter the interLATA market through the use of its SGAT without it actually furnishing the checklist items. Staff and the IXC's place an inordinate amount of importance on the actually furnishing standard when Congress felt that it was not absolutely necessary by establishing a Track B alternative.

Staff's argument that Track B is not needed if "is providing" were interpreted as meaning "making available" is misplaced. The Commission is of the opinion that our definition of "providing" is more substantial than merely "offering" the item. In Track A we are concerned with how the item is being provided or how it will be provided. For example, a carrier that is not facilities-based may order a checklist item. Under Track A we are considering how that item is being provided to this non-facilities based carrier. We are not only considering the fact that the item exists for ordering, but also assessing the quality of the actual item as it is being provided or as we feel it will be provided. Track B does not address these questions.

Finally, the legislative history cited by Staff does not define "is providing." A close reading indicates that Congress intended an operating facilities-based provider exist in order for Track A to be met. This is a requirement, whether or not Staff's interpretation of "is providing" is adopted. No party has cited legislative history stating that a facilities-based carrier must actually be furnishing each checklist item.

D. RESIDENTIAL AND BUSINESS SUBSCRIBER REQUIREMENT OF SECTION 271(c)(1)(A)

Ameritech states that it has satisfied the requirement that the competing providers serve residential and business customers. It cites Section 271(c)(1)(A) stating that the agreement or agreements entered into by the BOC must specify the terms and conditions under which access and interconnection is provided to "one or more unaffiliated competing providers of telephone exchange service . . . to residential and business subscribers." Section 271(c)(1)(A).

Ameritech contends that it has satisfied the "business and residential" requirement of Section 271(c)(1)(A) because CCT currently serves both business and residential customers. (CCT Ex. 1 at. 5; Staff Ex. 1.00 at 25). Ameritech contends that the Commission has certificated MFS and TCG to provide local exchange service to both business and residential customers. (MFS Ex. 1 at 19). Ameritech maintains that although it appears that MFS and TCG presently have only business subscribers to their local exchange service, MFS witness Durbin stated that MFS "hopes to have residential subscribers in the near future." (MFS Ex. 1, at 20).

Staff argues that it is not enough to simply have an agreement with a carrier that serves residential and business customers. Rather, Staff states that a BOC must satisfy each of the checklist items based on the access and interconnection which it is providing pursuant to an agreement or agreements which satisfy the residential and business subscriber requirement.

Staff contends that the Act contains a two-part test with respect to residential and business subscribers. The Act not only requires an agreement with a carrier serving business and residential customers, but also requires that the access and interconnection provided pursuant to such an agreement or agreements satisfies the competitive checklist. Staff argues that Ameritech's argument ignores the second part of the test.

Staff contends that based upon the fact that CCT serves both residential and business customers and is the only carrier currently serving residential customers, consideration of the MFS and TCG agreements (which involve carriers only serving business customers) would not produce "additional progress in meeting the checklist." Thus, Staff states that the only relevant agreement for purposes of determining checklist compliance is the CCT agreement.

MCI contends that neither CCT, MFS nor TCG can be considered a "competing" provider of local exchange service because, even combined, those three carriers serve a minuscule portion of the Illinois local exchange market. MCI contends that to qualify as a competitor, a carrier must serve both residential and business customers on a reasonably widespread basis. MCI defines a "reasonably widespread basis" to mean that a sufficient number of residential and business customers are being served to demonstrate that Ameritech's "bottleneck" is broken. MFS and TCG serve only business customers in Chicago. Moreover, CCT serves the limited geographic areas of Springfield, Decatur and Champaign, and even in those areas it serves less than 4% of local exchange customers. Based on this level of competition, or lack thereof, MCI believes that it is premature to conclude that Ameritech has met the requirements of Section 271(c)(1)(A) since it would tend to "trivialize" the requirements of subparagraph (A).

Similar to MCI, MFS argues that neither CCT's TCG's nor MFS' share of the business and residential market is suffice for any of these three carriers to be considered "competing" carriers. MFS points out that CCT serves only 7,000 access lines in Illinois in contrast to Ameritech's 6,397,349. Thus, MFS notes that consumers, whether business or residential, do not have a real choice in the local exchange market. Since the local market is not open to competition, MFS argues that the Commission need not reach the larger question of whether MFS, CCT or TCG are "facility based."

CompTel agrees with MCI and MFS that the competing provider requirement in Section 271(c)(1)(A) was not intended to be a token requirement that can be satisfied by the signing of an interconnection agreement, but was intended to ensure that the Act is working as Congress intended: to foster competition. CompTel contends that the record is uncontested that real competition is not present in the Illinois local exchange market. CompTel further contends that because Ameritech has not satisfied the checklist, the Commission need not reach the larger question of whether any Illinois LEC is a competing facilities-based provider.

Sprint similarly contends that Ameritech has failed to meet the "competing carrier" requirement because there is no real competition in the Illinois local exchange market. In support of its argument, Sprint points out that CCT serves approximately 1/10th of 1% of the access lines served by Ameritech. Sprint also points out that based on 7,000 access lines, CCT serves only 4,550 residential customers and 2,450 business customers in Illinois.

Ameritech replies that these positions on this issue are wrong as a matter of law and policy. It asserts that nothing in the statutory language requires that both residential and business customers be served by the same competitor. Ameritech further states that the Act was designed to ensure that the local exchange is open to competition. Ameritech asserts that that objective is served whether there is a single competitor serving both residential and business customers or, for example, two competitors, one serving business customers and the other serving residential customers. It further states that there is no good reason, then, for refusing to permit a BOC to satisfy the "business and residential" requirement through a combination of Section 271(c)(1)(A) agreements.

Ameritech further argues, however, that in the end, the question of whether MFS and TCG "count" in determining whether it has satisfied the "business and residential" requirement is

academic. Ameritech states that this is because it is undisputed that CCT furnishes local service to both business and residential customers – and this is all that the Act requires.

COMMISSION CONCLUSION

Section 271(c)(1)(A) requires a BOC to demonstrate that it has entered into "one or more binding agreements . . . specifying the terms and conditions under which the [BOC] is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service . . . to residential and business subscribers." 47 U.S.C. §271(c)(1)(A). The Commission agrees with Staff that this section requires that only carriers serving both business and residential customers qualify under Section 271(c)(1)(A).

It is undisputed that only CCT serves both residential and business customers, while MFS and TCG serve only business customers. Based on the fact that CCT serves both residential and business customers and is the only carrier currently serving residential customers, consideration of the MFS and TCG agreements (which involve carriers only serving business customers) would not produce additional progress in meeting the checklist. Thus, the only relevant agreement for purposes of determining checklist compliance is the CCT agreement.

The Commission rejects the IXCs' arguments regarding the amount of customers that CCT serves. Section 271 clearly lacks any mention of a "metric" test. Such a test could have been included in this Section, but its omission indicates that Congress did not intend one.

E. THE FACILITIES-BASED COMPETITOR REQUIREMENT OF SECTION 271(C)(1)(A)

Ameritech states that it has satisfied the requirement in Section 271(c)(1)(A) that the competing carrier or carriers offer service "either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier." It asserts that a facilities-based provider is one that supplies service to its customers, uses facilities and equipment to which it has title, or that purchases access to such facilities and equipment from any other entity (including Ameritech) and thereby obtains the use of such facilities and equipment for the purchase period. Ameritech states that CCT, MFS, and TCG satisfy the "predominantly facilities-based" requirement because they offer telephone exchange service predominantly over their own facilities.

Ameritech asserts that CCT, MFS and TCG are facilities-based providers under Section 271(c)(1)(A). It states that it is clear from the plain language of Section 271(c)(1)(A) that Congress used the term "their own" to distinguish between a pure reseller of telephone exchange services and a facilities-based competitor offering services pursuant to interconnection agreements. Ameritech further states that the statute provides that, to qualify as a facilities-based carrier, competing providers must offer telephone exchange service either (1) "exclusively over their own telephone exchange service facilities," or (2) "predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier." Section 271(c)(1)(A) (emphasis added). Ameritech contends that the statute juxtaposes two (and only two) alternative arrangements for competing carriers to provide telephone exchange service —

first, "over their own" facilities, and, second, through "the resale of the telecommunications services of another carrier." Accordingly, Ameritech argues that Congress defined "facilities-based" competition in telephone exchange services by what it is not: the "resale" of telephone exchange services provided over facilities controlled exclusively by a BOC.

Ameritech further contends that it follows that unbundled network elements leased to competitors must be categorized as "their own facilities," because services provided by those competitors over network elements that they control through lease arrangements do not constitute "the resale of the telecommunications services of another carrier." It states that Congress did not intend to limit the definition of "facilities-based competition" to competition from entities that have title to the network facilities over which the competitive services are provided. Ameritech asserts that this is because the statutory text demonstrates this to be true. It opines that Section 271(c)(1)(A) does not require that service facilities be "owned by" the competing providers. Rather, it states that the facilities must be "their own." Ameritech, therefore, contends that this language describes a property interest characterized by control, which a lease grants, rather than possession of a title interest.

Ameritech argues that the critical focus of Section 271(c)(1)(A) is control over — not title to — network elements. It cites the FCC's Regulations which preclude an incumbent LEC from imposing limitations on a competing provider's use of network elements to offer service. 47 C.F.R. § 51.309(c) ("[a] telecommunications carrier purchasing access to an unbundled network facility is entitled to exclusive use of that facility for a period of time, or when purchasing access to a feature, function, or capability of a facility, a telecommunications carrier is entitled to use of that feature, function, or capability for a period of time"). Thus, Ameritech argues, the Regulations make clear that "exclusive use" or control of network elements is the hallmark of a "facilities-based" competitor. Ameritech states that when a BOC complies with the Act and the FCC's Regulations, as a matter of law it has effectively transferred control over leased network elements to the competitor. It asserts that by statutory and regulatory definition, the leased elements become the competitor's "own" facilities.

Thus, Ameritech maintains that CCT, TCG and MFS qualify as "predominantly facilities-based" providers under Section 271(c)(1)(A). Ameritech notes that CCT serves only a small portion of its access lines on a resale basis entirely through Ameritech's facilities; the vast majority are served either entirely through facilities to which CCT has title or through such facilities in conjunction with unbundled elements obtained from Ameritech. Ameritech states that it does not appear that TCG serves <u>any</u> customers through resale. And, finally, it asserts that a majority of MFS's access lines are served either entirely through facilities to which MFS has title, or through such facilities in conjunction with unbundled elements obtained from Ameritech.

Staff witness TerKeurst testified that a direct measure of determining whether a carrier is predominantly facilities-based could be based on a relative LSRIC test. For a carrier serving customers over its own facilities, unbundled loops, and resale, a weighted average based on the percent of the carrier's own facilities could be calculated. If the weighted average is over 50%, then the carrier could be deemed serving customers over its own facilities. Staff witness Jennings, however, could not conduct such a test because Staff contends that insufficient information was available. Instead, Mr. Jennings relied upon information submitted solely by Ameritech regarding the embedded investment dollars of central office cable, wired loop investment and other facilities-based investment. Based on the information supplied by

Ameritech, which relied heavily on embedded costs, Staff concluded that between CCT, MFS and TCG, only CCT could possibly be serving customers "predominately" over its own facilities.

In addition, Staff argues that Ameritech's inclusion of unbundled network elements in its definition of a carrier's "own" facilities is not supported by the statutory language, the legislative history or sound policy. Staff contends that Ameritech's definition would lead to the illogical result that a carrier is "facilities-based" -- even if it has not purchased and installed a single switch, loop or other facility -- so long as it is using unbundled network elements to a greater extent than it is using resale to provide service to end users. Staff asserts that this is contrary to the language of Section 271(c)(1)(A). Staff contends that the provision specifying that a carrier offer its services exclusively or predominantly over its own facilities explains the meaning of the sentence which requires a BOC to establish that it "is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service . . . to residential and business subscribers." 47 U.S.C. §271(c)(1)(A) (emphasis added). Accordingly, Staff states that it is illogical and unreasonable to suggest that unbundled network elements owned by a BOC should be treated as the "facilities and equipment" of the competitor for which a BOC must provide interconnection. Staff asserts that unbundled network elements constitute the BOC's network facilities to which the requesting carrier must be allowed to interconnect, not the connecting carrier's own facilities.

Staff also argues that Ameritech's position ignores that the facilities-based competitor requirement imposed by Congress differentiates between the competitive provider's facilities and the BOC's facilities for purposes of assessing facilities-based competition. Staff contends that the issue of how the competitor acquired certain facilities misses the point. Staff states that the question which must be answered is whether the competitor is providing facilities-based service which does not rely on the BOC's facilities. Staff opines that Ameritech's concept of facilities versus non-facilities is not consistent with the concept of facilities which are -- and facilities which are not -- the provider's own. It contends that Ameritech's definition renders Congress's use of the term "own" virtually meaningless in as much as it does not allow for the possibility of "facilities" which are not the provider's own facilities. Staff opines that Ameritech's definition defines away the very distinction Congress was seeking to make, and is clearly not consistent with the intent of Congress.

Staff also makes the argument that the legislative history of the Act demonstrates that the intent of the facilities-based competitor requirement was to ensure that a BOC was facing facilities-based competition from a carrier using facilities not owned by the BOC. It cites the Conference Report which indicates that Congress believed that cable companies -- with their existing connection to 95% of the United States homes -- were likely to be the "facilities-based" competitors envisioned under Section 271(c)(1)(A). H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 147-48 (1996). Staff states that Congress' explicit reference to cable companies which already own substantial facilities as the model "facilities-based competitor" hardly comports with Ameritech's contention that Congress intended a carrier providing service solely through use of the unbundled network elements of a BOC would satisfy the facilities-based competitor requirement.

AT&T contends that the plain language of Section 271(c)(1)(A) clearly contemplates two sets of "network facilities" such that the competing provider must have its own network facilities, and that leasing unbundled facilities from the BOC is not sufficient to satisfy this requirement. AT&T notes that the reason for the facilities-based requirement is clear. So long as

the BOC controls the provision of network elements to CLECs, the CLEC is critically dependent upon the BOC in providing service to its end user customers. AT&T submits that only by a competitor actually owning and providing service via its own facilities can the BOC truly be disciplined by the marketplace as contemplated by Section 271(c)(1)(A).

Sprint contends that in order to be considered facilities-based, a competing carrier must be providing service using substantially more than 50% of facilities (including loops) that it actually owns as measured, *e.g.*, by investment. Sprint points out that of the 7,000 access lines served by CCT, only 400 are served entirely through the use of its own facilities. Sprint further contends that there is no basis for Ameritech's equating of unbundled network elements with a competitor's own independent network. Sprint agrees with Staff that it would be nonsensical for this Commission to believe that a carrier with no independent network facilities should qualify as a "facilities-based" carrier. It also points out that Sections251(2)(3) and 252(d)(i) demonstrate that Congress was fully capable of referring explicitly to lease hold arrangements and chose not to. Thus, Sprint concludes that Ameritech has not satisfied the facilities-based requirement.

CompTel asserts that in the current environment, where Ameritech is not offering unbundled elements that comply with the Act, in terms of definition, pricing, and operational support, it is absurd to consider Ameritech's definition of facilities-based. It agrees with Ms. TerKeurst's position that Ameritech still has significant influence over the extent to which that network element is actually useful to the competing carriers. CompTel, therefore, concludes that Ameritech must make vast improvements in its offering of unbundled network elements before the Commission even should consider Ameritech's proposed definition of Section 271(c)(1)(A).

MCI argues that the term "own" should mean what it says: if a new entrant is using Ameritech facilities, it is not using its "own" facilities. MCI also submits that although predominantly means over 50%, a number of factors which focus on independence from Ameritech's facilities should be examined to determine if a carrier is predominantly using its own facilities.

Ameritech responds by stating that the arguments advanced by the IXCs reflect a transparent strategy to block additional competition in the long distance business by preventing Ameritech from ever obtaining interLATA authority. In particular, Ameritech states that Sprint's definition for "facilities-based" may never be satisfied.

Ameritech further states that Sprint's theory produces results that would completely frustrate the pro-competitive purposes of the Act. It contends that placing dispositive emphasis on loops, Sprint effectively ignores whether competing carriers have title to local switches, which could be viewed as more relevant in determining whether a competing carrier is predominantly facilities-based. Ameritech also states that Sprint's theory ignores the fact that the extent to which different carriers will construct new loops will vary on a carrier-by-carrier basis. It postulates that it is possible, for example, that a carrier may decide to self-provision nearly all of its network, but lease unbundled loops from Ameritech. Ameritech contends that although such a carrier would qualify as "predominantly facilities-based" under any rational standard, it would not under Sprint's theory.

Ameritech also takes exception to MCI's multi-factor test which it calls be unworkable in practice. It criticizes the fact that MCI does not say how the various factors should be weighed collectively, and even admits that one of the factors is simply unmeasurable. Ameritech states that

MCI's proposal would not provide any guidance as to whether a competing carrier is predominantly facilities-based under Section 271(c)(1)(A), and would be unstable in application.

COMMISSION CONCLUSION

The words "their own" refer to the facilities owned by the competing providers. This is the plain meaning of Section 271 (c)(1)(A). Leased facilities do not qualify as "their own" facilities. If Congress meant to include leased facilities, it would have stated so. There is no ambiguity present with respect to this language and, therefore, there is no need to look any deeper than the words of this Section.

The Commission agrees with Staff that "predominantly" should be interpreted to mean greater than 50%. That approach not only gives a common sense meaning to the word "predominantly," but also interprets that term in a manner which acknowledges the alternative standard Congress included in the statute -- exclusively.

The Commission also agrees with Staff that the proper measure for determining whether a carrier is predominantly facilities-based is using a relative-LRSIC analysis. Thus, for a carrier serving customers over its own facilities, unbundled loops, and resale, a weighted average based on the percent of the carrier's own facilities should be calculated. If the weighted average exceeds 50 percent, then the carrier is deemed serving customers predominantly over its own facilities.

However, due to insufficient information, we must rely on the information that Ameritech submitted regarding the embedded investment dollars of central office cable, wired loop investment, and other facilities-based investment. We accept Staff's analysis as reasonable and, thus, also conclude that CCT is serving customers predominantly over its own facilities. We agree with Staff that a determination with respect to MFS cannot be made in this record.

F. AMERITECH'S RELIANCE ON OTHER AGREEMENTS THROUGH MOST FAVORED NATIONS CLAUSES

Ameritech contends that its interconnection agreements with CCT, MFS and TCG each contain a "most favored nation" ("MFN") clause. It notes that pursuant to those MFN clauses, CCT, MFS and TCG — and any other carrier with an interconnection agreement — may order individual network elements or checklist items out of Ameritech's approved interconnection agreement with AT&T ("AT&T Agreement"). Ameritech states that the AT&T Agreement makes available all of the checklist items. It stresses that the Commission expressly has found that all of the rates, terms and conditions contained in the AT&T Agreement fully comply with Sections 251 and 252(d), and with the FCC's Regulations. Accordingly, Ameritech maintains that CCT, MFS and TCG have available to them all of the checklist items for immediate order, on rates, terms and conditions that fully comport with the Act. Ameritech adds that the rates, terms and conditions contained in its interconnection agreements with CCT, MFS and TCG fully comply with Sections 251 and 252(d). However, it notes that it would not matter even if that were not the case, because these carriers may order unbundled loops, or any other checklist item, out of the AT&T Agreement.

Staff refers to Ameritech's attempt to rely on other agreements through MFN clauses as an attempt to do indirectly what the 1996 Act prohibits on a direct basis. It states that this reliance on the AT&T Agreement is nothing more than a Track B approach in disguise. Staff maintains that

Ameritech has not met the requirements to proceed under Track B. It further notes that with the language of Section 271(c)(1)(B) -- the Track B approach -- Congress allowed for the possibility of interLATA relief in situations where the BOC is offering only access and interconnection. Staff contends, however, that this "possibility" is subject to specific requirements which represent Congress' judgment as to the proper balancing of the diverse if not competing interest of BOCs, long distance companies and consumers. Staff argues that Ameritech has not demonstrated that it meets those requirements.

Staff further notes that MFN clauses are akin to the statutory requirement in Section 252(i) that ILECs make approved agreements available to all carriers. 47 U.S.C. §252(i). It contends that if Congress intended to allow BOCs to rely on the availability of other agreements to satisfy the conditions of Section 271(c)(1)(A), it would have provided for that potentiality. Staff maintains that, notwithstanding Congress' creation of a legislative MFN clause in Section 252(i), Congress specifically required in Section 271(c)(1)(A) that a BOC establish that it has entered into one or more agreements specifying the terms and conditions under which it is providing access and interconnection. Staff further stresses that Congress provided in Section 271(c)(2)(A) that the checklist requirements of Section 271(c)(2)(B) must be met by the access and interconnection which the BOC is providing pursuant to its agreements with facilities-based carriers serving business and residential carriers as required under Section 271(c)(1)(A). Staff states that if Congress had intended to allow BOCs to rely on the terms and conditions of other agreements, it would have specified otherwise.

COMMISSION CONCLUSION

There is simply nothing wrong with the incorporation by reference of items from other contracts. This is what the MFN clause accomplishes. Incorporation by reference is sufficient from a contract law standpoint and, therefore, it is sufficient for the Commission. Pursuant to those MFN clauses, CCT, MFS and TCG may order individual network elements or checklist items out of Ameritech's approved interconnection agreement with AT&T or any other approved agreement. The AT&T Agreement includes all of the checklist items. In addition, this Commission has expressly found that all of the rates, terms and conditions contained in the AT&T Agreement fully comply with Sections 251 and 252(d), and with the FCC's Regulations.

G. RELIANCE ON SGAT

Staff argues that the Company SGAT is not part of the record evidence and should not be relied on for purposes of determining Ameritech's compliance with the checklist items. Furthermore, Staff takes the position that subparagraphs (A) and (B) of Section 271(c)(1) represent separate and distinct alternatives which it argues cannot be combined. It cites Paragraph 1 of Section 271(c) which specifies that a BOC must "meet the requirements of subparagraph (A) or subparagraph (B) of this paragraph for each State for which the authorization is sought." 47 U.S.C. §271(c)(1) (emphasis added). Staff argues that in construing a statute, courts generally construe statutory requirements written in the disjunctive as setting out separate and distinct alternatives.

Staff contends that the language of Section 271(c)(1) -- including subparagraphs (A) and (B) -- clearly establishes that the requirements in subparagraphs (A) and (B) were intended to be, and in fact do represent, separate and distinct alternatives. Staff states that in addition to the "or" in Section 271(c)(1), the language in subparagraph (B) clearly indicates that the requirements of subparagraph (B) come into play only "if . . . no such provider [described in subparagraph (A)] has requested the access and interconnection described in subparagraph (A) . . . ." 47 U.S.C. §271(c)(1)(B).

Ameritech maintains that if the Commission were to assume that "provide" means "actually furnish" and not "make available," there must be some Track B outlet for it in the event that competing carriers do not order certain checklist items. However, Ameritech contends that Staff's legal theory does not accomplish that result. Among other things, it notes that Staff's theory rests upon a crucial, but false premise: that Ameritech's interconnection agreements have implementation schedules requiring competing carriers actually to order all of the checklist items made available in the agreements.

In fact, Ameritech states that its interconnection agreements with CCT, MFS, TCG and AT&T contain implementation schedules only for interconnection, and not for any of the other 13 checklist items. See CCT Agreement, Sched. 3.0; MFS Agreement, Sched. 3.0; TCG Agreement, Sched. 3.0; AT&T Agreement, Sched. 2.1. Moreover, these competing carriers are not, in fact, actually required to interconnect with Ameritech by the date set forth in their implementation schedules. Thus, according to Ameritech, no competing carrier has committed to purchase checklist items; the interconnection agreements only require Ameritech to furnish products, services and network elements when and if the competing carriers ask to purchase them. It follows, then, that the "Track B outlet" theory articulated by Staff, does not relieve the quandary caused by Staff's stringent interpretation of the term "provide." For example, Staff's theory would not succeed in creating a Track B option for Ameritech in the event that no carrier chooses to take ULS, because the relevant implementation schedules do not commit competing carriers to purchase that checklist item.

Ameritech puts forth an alternative analysis of Section 271(c)(1)(B). It maintains that if Section 271(c)(1)(B) entitles a BOC to Track B relief under circumstances where Section 271(c)(1)(A) carriers do not order checklist items they have committed to purchase in their implementation schedules, then, a fortiori, the same should be true where competing carriers do not commit at all to purchase certain checklist items: More specifically, to the extent that Ameritech's Section 271(c)(1)(A) competitors do not order certain checklist items and are not required to do so by their implementation schedules, Ameritech may satisfy those checklist items through its SGAT.

Accordingly, Ameritech concludes that if the Commission accepts Staff's view that "provide" means only "actually furnish," It would be entitled to pursue interLATA relief via the foregoing exception in Section 271(c)(1)(B). First, Ameritech contends that it actually furnishes several checklist items to its Section 271(c)(1)(A) competitive carriers in compliance with the competitive checklist. Second, it states that its SGAT generally offers the checklist items that no Section 271(c)(1)(A) competitor has ordered or committed to order. Accordingly, Ameritech argues that pursuant to the exception set forth in Section 271(c)(1)(B), it qualifies for interLATA relief.

Sprint and MCI agree with Staff that Ameritech cannot use an SGAT intended for Track B entrance to meet the requirements of the competitive checklist.

Commission Conclusion

Tracks A and B are two separate and distinct alternatives which cannot be combined. Ameritech fails to cite any legal authority for the proposition that they can be combined. The language of Section 271 is clear that no such option is provided. Accordingly, Ameritech's arguments to this effect which do not include any legal authority are rejected.

V. AMERITECH ILLINOIS' COMPLIANCE WITH THE "COMPETITIVE CHECKLIST

A. INTRODUCTION

As previously stated in this Order, Section 271(d)(2)(B) directs the FCC, before making a final determination on a BOC's Section 271 application, to "consult" with the relevant state Commission "in order to verify the compliance of the [BOC] with the requirements of subsection (c)." The standards applicable to whether a particular checklist item is being provided are set forth in Section II. C. of this Order.

B. PROVISION OF INDIVIDUAL CHECKLIST ITEMS

1. Interconnection

Checklist item (i) requires Ameritech to provide interconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1). 47 U.S.C. §271(c)(2)(B)(i). Pursuant to Section 251(d)(1), the FCC entered its Interconnection Order on August 8, 1996 setting forth the rules and regulations implementing Section 251(c). State commissions are charged with the duty to implement Section 251(c), Section 252(d), and the FCC Interconnection Order under Sections 252(b)(4)(C), 252(c), 252(d) and 252(e). The Commission agrees with Staff that in order to determine whether Ameritech has met the interconnection component of the Checklist, Staff recommends that the Commission consider the requirements of Sections 251(c) and 252(d), the FCC Interconnection Order and the Commission's own prior Orders implementing these provisions. Staff Ex. 4.01, at 3.

The FCC Order requires that incumbent LECs offer the following methods of interconnection: 1) physical collocation or virtual collocation; 2) meet point interconnection arrangements; and 3) any other technically feasible methods. Section 51.321(b) of the Code of Federal Regulations ("CFR").

In addition, the FCC requires that incumbent LECs provide interconnection to requesting carriers:

(i) for the transmission and routing of telephone exchange traffic, exchange access traffic, or both;

(ii) at any technically feasible point including, at a minimum: a) the line-side of a local switch; b) the trunk-side of a local switch; c) the trunk interconnection points for a tandem switch; d) out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases; and e) access to unbundled network elements listed in Section 51.319 of the CFR.

(iii) equal in quality as provided to itself;
(iv) on terms and conditions that are just, reasonable, and nondiscriminatory; and
(v) two-way trunking upon request if technically feasible.

47 CFR Section 51.305.

Since the interconnection checklist item must be consistent with Sections 251(c) and 252(d), the FCC Interconnection Order, and the Commission's Orders implementing these provisions, Staff recommended that Ameritech be required to provide evidence that each provision actually is being met. Staff Ex. 4.01, at. 3.

With respect to pricing, a single pricing standard for interconnection and network elements is set forth in Section 252(d)(1), which provides as follows:

(d) Pricing Standards.

(1) Interconnection and Network Element Charges. Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section

(A) shall be

(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

47 U.S.C. §252(d).

Staff

Staff states that CCT, MFS, and TCG all have access to the three types of interconnection (physical, virtual, and meet point). Staff Ex. 1.02 at 20. According to Staff, Ameritech is providing virtual collocation to all three carriers and meet point arrangements to MFS and TCG. However, Staff states that Ameritech is not providing physical collocation to any of the carriers, nor meet point arrangements to CCT. It notes that the CCT and TCG arrangements explicitly prohibit the

collocation of hubbing equipment. However, the record evidence reflects the fact that hubbing and a variety of other interconnection terms and conditions may be available to these carriers only through their MFN clauses. According to Staff, CCT has not indicated that it wants additional types of interconnection. Tr. 884. Therefore, consistent with Ms. TerKeurst's testimony, it is Staff's position that Ameritech does not have to provide physical collocation or meet point interconnection to CCT in order to comply with the interconnection checklist requirements.

In the arbitration proceedings, Staff recommended using the Commission's Cost of Service Rule, 83 Ill. Adm. Code Part 791, to calculate a Long Run Service Incremental Cost ("LRSIC") for interconnection and network elements plus a markup to reflect a reasonable share of shared and common costs, excluding retailing costs. Staff Ex. 4.0 at 10. Staff states that its recommendations have been adopted by the Commission, and Staff believes the same methodologies should be utilized in evaluating Ameritech's pricing of interconnection.

In his rebuttal testimony, Staff witness Jennings explained that he reviewed the interconnection provisions of the TCG, MFS, and CCT contracts for compliance with the pricing standards of Section 252(d). He concluded that the prices contained in the TCG contract are the same as those adopted by the Commission in Dockets. 96 AB-003/4 and 96 AB-006. However, he also found that the interconnection prices in the MFS and CCT agreements are significantly higher than those adopted in the above dockets, and that the listed crossconnect rates for collocation did not comply with Section 252(d) because they were not cost-based. Staff Ex. 4.02 at 10-11. Since the Commission set rates for interconnection and collocation that were based on Section 252(d) in Dockets. 96-AB-003/4, Staff concludes that those rates must be used to determine if the rates in the MFS and CCT agreements are consistent with Section 252(d). Staff notes, however, that the price for meet point arrangements in those agreements is consistent with Section 252(d), since each carrier is responsible for its own cost of providing meet point interconnection.

In conclusion, Staff takes the position that while Ameritech provides interconnection to CCT through its agreement, there is no record evidence regarding whether the interconnection terms are consistent with the FCC requirements. Further, it states that the prices are not in compliance with Section 252(d), as discussed above. Because of this, Staff recommends that the Commission find that Ameritech does not meet the checklist requirements for interconnection

Sprint

Sprint asserts that it should be allowed to mix traffic types (i.e., local, intraLATA, and interLATA) on a single, nonjurisdictional trunk group. Its witness Reeves argues that utilization of such trunk groups is both feasible and necessary to ensure cost-effective and efficient interconnection. Sprint contends that, by refusing to agree to such nonjurisdictional "supertrunks," Ameritech is artificially inflating Sprint's costs and hampering its ability to compete in the local market. With respect to measuring and billing the different traffic types combined on a single trunk group, it asserts that it can provide Ameritech and other connecting companies with accurate and auditable switch records that have commonly been used by neighboring ILECs to determine usage for similar billing purposes.

Ameritech

With respect to Sprint's position regarding use of a single nonjurisdictional trunk group for all traffic, Ameritech answers that the trunking options it provides are consistent with its obligation to transmit and route exchange access traffic. It provides one-way or two-way trunks for the purpose of integrating the end offices and/or tandem offices of carriers for the completion of local switched and interLATA toll traffic. As part of the options provided, Ameritech requires that CLECs use Toll Connecting Trunks ("TCTs") to carry interLATA toll-switched traffic. It maintains that, if nonjurisdictional trunks were used, neither Ameritech nor any other carrier would be able to isolate or measure the volume of each type of traffic that terminates over a single trunk group. This would necessitate the use of estimated percentage factors in lieu of actual measurements to create a bill. Ameritech contends that such "trust me" billing arrangements are not commercially reasonable or cost effective in the present market, noting that they would require costly changes to both Ameritech billing systems for reciprocal compensation and its systems for billing IXC access charges. Ameritech Ex. 2.1 at 9. Its trunking options, in contrast, permit each carrier to bill the originating carrier for actual minutes of use and actual rates at the time the call was made. Ameritech observes that the Commission recognized this in the MCI and Sprint arbitrations, finding that it was impossible to obtain accurate measurements over combined trunk groups and concluding in the Sprint decision that "Sprint will not be unduly impeded from competing in the local market by the adoption of Ameritech' proposed solution." Sprint Arbitration Decision, Docket 96-AB-008 at 6; see also MCI Arbitration Decision, Docket 96-AB-006 at 14-15.

With respect to Staff's position regarding the negotiated collocation prices contained in the CCT-Ameritech interconnection agreement, Ameritech argues that the prices, terms and conditions for interconnection and collocation contained in the AT&T-Ameritech interconnection agreement are available to CCT, MFS and TCG through the MFN clauses of their respective interconnection agreements, which enable those parties to incorporate such terms, conditions and prices at a service and element-specific level. Moreover, Ameritech points out that a substantial amount of record evidence demonstrates that its interconnection offering satisfies the FCC's regulations.

Commission Conclusion

The Commission finds that Ameritech provides interconnection to requesting carriers at all points required for the transmission and routing of telephone exchange traffic, exchange access traffic, or both, in accordance with the applicable FCC Regulations. 47 C.F.R. § 51.305. The Commission further finds that Ameritech has established that, pursuant to Section 251(c)(6), it provides physical collocation on its premises of carrier-owned equipment necessary for interconnection with its network, and virtual collocation where technically feasible.

The Commission further finds that the trunking options Ameritech provides are consistent with its obligation to transmit and route exchange access traffic. Ameritech provides one-way or two-way trunks for the purpose of integrating the end offices and/or tandem offices of carriers for the completion of local switched and interLATA toll traffic. As part of the options provided, Ameritech requires that CLECs use Toll Connecting Trunks to carry interLATA toll-switched traffic. We agree with Ameritech's contention that, if nonjurisdictional trunks were used, neither Ameritech nor any other carrier would be able to isolate or measure the volume of each type of traffic that terminates over a single trunk group, which would in turn necessitate the use of estimated. percentage factors in lieu of actual measurements to create a bill. Such billing

arrangements are not commercially reasonable or cost effective in the present market, as they would require extensive modifications to both Ameritech's billing systems for reciprocal compensation and its systems for billing IXC access charges. Ameritech's trunking options, in contrast, permit each carrier to bill the originating carrier for actual minutes of use and actual rates at the time the call was made. We so found in the MCI and Sprint arbitrations, noting that it was not possible to obtain accurate measurements over combined trunk groups and stating in the Sprint decision that "Sprint will not be unduly impeded from competing in the local market by the adoption of Ameritech's proposed solution." Sprint Arbitration Decision, 96-AB-008, at 6; MCI Arbitration Decision, 96-AB-006, at 14-15. The record evidence in this proceeding presents no reason to reach a contrary conclusion now.

Finally, the Commission disagrees with Staff on the issue of the sufficiency of evidence in the record and that, because the collocation prices negotiated by CCT and Ameritech are purportedly higher than those approved by the Commission in the AT&T-Ameritech arbitration, Dockets. 96-AB-003/004, Ameritech has not complied with the checklist requirements for interconnection. First, we find that substantial evidence in the record addresses and supports the fact that Ameritech's interconnection offerings satisfy the FCC's requirements. Second, as Ameritech correctly notes, the prices, terms and conditions for interconnection and collocation approved in Dockets. 96-AB-003/004, and contained in the AT&T/Ameritech interconnection agreement approved in Docket 96-AA-001, are available to CCT, MFS and TCG through the MFN clauses in those carriers' respective interconnection agreements with Ameritech.

Accordingly, we find that Ameritech has complied with the interconnection requirements of Section 271(c)(2)(B)(i).

2. Network Elements

a. Operation Support System

Checklist item (ii) requires Ameritech to provide nondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1). 47 U.S.C. §271(c)(2)(B)(ii). Under Section 271(c)(2)(B)(ii), Ameritech must provide access to unbundled network elements in accordance with Section 251(c) and the rules and regulations adopted by the FCC Order. Furthermore, Ameritech must meet any additional requirements established by the Commission based on Section 251(c) or the FCC Order.

In its Order, the FCC has established, at a minimum, the network elements that must be made available by an incumbent LEC. These elements are as follows:

(a) Local loop;
(b) Network Interface Device;
(c) Switching Capability including:
    (1) Local Switching; and
    (2) Tandem Switching Capability;
(d) Interoffice Transmission Facilities;
(e) Signaling Networks and Call-Related Databases including:

(1) Signaling Networks (signaling links and signaling transfer points) and
(2) Call-Related Databases (used in signaling networks for billing and collection or the transmission, routing, or other provision of a telecommunications service (e.g., LIDB, 800, etc.) and;
(3) Service Management Systems;

(f) Operations Support Systems Functions ("OSS") (pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information by no later than January 1, 1997); and

(g) Operator Services and Directory Assistance. 47 CFR Section 51.319. All of these items except Network Interface Devices. Tandem Switching Capability, and OSS Functions are listed as separate checklist items in Section 271(c)(2)(B), in addition to the general network element item in Section 271(c)(2)(B)(ii).

In this section, we address Ameritech's provision of nondiscriminatory access to OSS, network interface devices, and dark fiber. Ameritech's provision of nondiscriminatory access to other unbundled network elements is addressed elsewhere in this Order.

Staff

Staff points out that the OSS are crucial to the development of local exchange competition. In light of their importance, it recommended that Ameritech be required to demonstrate, through empirical evidence, that its OSS are operational and functional; otherwise carriers may never be in a position actually to purchase unbundled network elements and/or wholesale services from Ameritech. Staff further contends that the only way to ensure this is through actual use because internal testing by Ameritech does not assure that other carriers will be able to utilize its system.

Staff contends that the OSS are mutually dependent on both Ameritech and the interconnecting carriers and that Ameritech should not simply have the OSS set up on its side of the interface and await interconnection and use by other carriers. Staff Ex. 4.02 at 2. Staff witness Jennings noted that in order for the OSS to work in a commercially feasible manner, Ameritech has the added responsibility to ensure the connecting carriers have sufficient information of its OSS, including working with carriers that experience rejected orders and/or orders that require manual intervention.

Staff contends that it was not sufficient for Ameritech's OSS to have undergone internal testing in order for the OSS to be deemed operational. Staff states that the completion of internal testing of the various OSS is no assurance that other carriers will be able effectively to utilize the OSS in a commercially feasible manner. Staff notes that there may be oversights in a carrier's implementation of Ameritech's OSS specifications manuals. Alternatively, Staff states that Ameritech's OSS specification manuals may not be entirely clear, so that a carrier may reasonably interpret the manuals differently than interpreted by Ameritech. Such a situation would result in an error and failure to complete an order. Therefore, Staff asserts that it is essential that Ameritech's OSS meet the following criteria: internal testing by Ameritech; testing with other carriers; and operational readiness. The operational readiness is the most difficult criterion to define and can be different for each carrier. It is dependent on a carrier's testing with Ameritech to a level where the carrier can successfully utilize Ameritech's OSS on a commercially feasible level.

Staff defines a commercially feasible level as a level which implies that carriers are able to utilize Ameritech's OSS in a manner sufficient to accommodate the demand of a new LEC's services by end users. Id. at 3. Staff contends that in order for a carrier to effectively compete in the local exchange market, the carrier must be able to offer its services to the general public with the expectation that all service orders will be processed.

With respect to the current status of the five OSS interfaces, Staff states as follows:

1. With respect to the pre-ordering interface, Ameritech has performed carrier to carrier testing with USN for the access to customer service record, telephone number selection, and due date selection. Tr. 1046. USN is the only carrier in Illinois currently utilizing the pre-ordering OSS interface. Staff Cross Ex. 3, Question 3-6.

2. The ordering OSS consist of two separate interfaces, an EDI interface for resale services and an ASR interface for trunks and unbundled loops. Staff Cross Ex. 3, Question 3-2. Ameritech has completed internal testing of the EDI and ASR interface. Staff Cross Ex. 3, Question 3-7. USN is the only carrier in Illinois currently utilizing the EDI interface for ordering resale services. Ameritech has performed carrier-to-carrier testing with USN for the EDI interface and AT&T is currently in the testing phase of the EDI ordering interface. Tr. 1047-1049. In addition, Ameritech has performed carrier to carrier testing of the ASR interface with MFS; however, this interface has been available for other purposes (i.e., ordering trunks) for some time. Tr. 1049. Both MFS and CCT currently are using the ASR interface for ordering unbundled loops and trunks. Staff Cross Ex. 3, Question 3-7.

3. The provisioning interface also consist of two separate interfaces, EDI and ASR. The EDI provisioning interface includes the following functions: order confirmation, order jeopardy, and order completion. The ASR provisioning interface just includes the provisioning function which allows the ability to identify that an order is being processed by Ameritech. Staff states Ameritech has performed internal testing of both the EDI and ASR provisioning interface. Staff Cross Ex. 3, Question 3-8. Ameritech has performed carrier-to-carrier testing for firm order confirmation and order completion functions with the same carriers that tested the ordering EDI interface. Tr. 1049. However, Ameritech has not performed carrier-to-carrier testing of the order of jeopardy function. Tr. 1050. Currently, USN is the only carrier in Illinois currently using the EDI provisioning interface. However, both MFS and CCT are currently utilizing the ASR provisioning interface.

4. The billing OSS includes the following functions: daily usage, bill lines (ACIS billing format), and bill trunks (CABS billing format). Staff Cross Ex. 3, Question 3-4. Ameritech has completed internal testing of the billing interface. Staff Cross Ex. 3, Question 3-9. In addition, Ameritech has performed carrier-to-carrier testing of the billing interface with several companies. Tr. 1050. Currently, USN, MFS, United Communications, OneStop, and LCI are using the daily usage and bill lines function of the billing interface. MFS and CCTS are using the bill trunks interface. Staff Cross Ex. 3, Question 3-9.

5. The repair and maintenance OSS includes trouble entry and trouble status. Staff Cross Ex. 3, Question 3-5. Ameritech has completed internal testing of both trouble entry

and trouble status functions. However, Staff asserts that there has been no carrier-to-carrier testing of the repair and maintenance interface. Tr. 1050-1051. Ameritech is not currently providing the repair and maintenance OSS in any of its five state region. Staff Cross Ex. 3, Question 3-10.

Using the three criteria referenced by Mr. Jennings, internal testing, carrier-to-carrier testing, and operational readiness, Staff takes the position that the OSS requirement has not been met. The pre-ordering interface has just been developed and only one carrier is currently utilizing it. Supra. In addition, only USN is currently utilizing the provisioning interface.

Staff notes that the CCT/Ameritech agreement provides for OSS. Sections 9.5.1 and 17.0 of the agreement. Staff refers to Section 17.0 which states that Ameritech will provide OSS consistent with the 1996 Act and the FCC Order. Staff also refers to the testimony of CCT witness Scott Jennings, which states that CCT is experiencing difficulty advising customers about the status of repairs and that CCT was still experiencing problems. Tr. 896. Staff further notes that Mr. Jennings testified that CCT will be requesting electronic interfaces for repair and maintenance at the next meeting with Ameritech. Tr. 927. Based on all of the foregoing, Staff recommends that the Commission find that Ameritech has not met the OSS checklist requirement.

AT&T

AT&T submitted that Ameritech has yet to fulfill the checklist requirement to provide nondiscriminatory (i.e., at parity with Ameritech's retail operations) access to its OSS for pre-ordering, provisioning, maintenance, repair, and billing. AT&T agreed with Staff and other parties that the development of electronic interface specifications can be deemed complete only after a period of meaningful integration testing. Such operational testing has not taken place. It is not until there is a proven ability to communicate effectively and efficiently, from end-to-end, that a system can be said to be in a state of operational readiness.

AT&T noted that such systems do not now exist in Illinois. Instead, the evidence demonstrates that the specifications for the electronic interfaces are being continually updated and revised by Ameritech, making it difficult for CLECs to design their interfaces to be compatible with those of Ameritech. (Rogers, Tr. 1106-1107). In addition, the evidence unequivocally shows that the interfaces have not been tested to show that they are operationally ready, *i.e.*, ready to be used by CLECs on a commercial basis actually to serve customers.

Most importantly, AT&T stressed that the integrity of Ameritech's OSS process is suspect and has not been sufficiently operationally tested under marketplace conditions. AT&T notes that at least 70% of the orders processed over Ameritech's electronic interfaces have, for undisclosed reasons, "fallen out" to manual processing efforts. (Rogers Tr. 1071, 1143-45). This inability to process orders electronically raises serious questions as to whether Ameritech can reliably handle competitively significant volumes of orders in real-world conditions. AT&T also notes that Ameritech's marketplace testing of its OSS has been confined to small carriers and that even these carriers have recorded significant problems with Ameritech's OSS.

With respect to unbundled network element ("UNE") combinations for the UNE platform, AT&T notes that Ameritech has not submitted any specifications. Similarly, it has not conducted any testing relating to UNE.

AT&T further contended that Ameritech's proposals for measuring whether it is providing access to OSS at parity, as required by the Act and the FCC regulations, are deficient. For instance, in assessing time to repair POTS, Ameritech proposes to report only on its success rate at restoring service within a 24 hour time period, tracking "% exceeding" that stated target. (Mickens Rebuttal, Ameritech Ill. Ex. 8.0, Schedule 2). This approach would not reveal disparities in average performance within the targeted range. For instance, assume that the average "time to restore" for Ameritech customers was five hours as compared to an average "time to restore" of 20 hours for AT&T customers but, in both cases, restoration time exceeded Ameritech's target interval in only 3% of the cases. Ameritech's proposed parity performance report would report this level of performance as "nondiscriminatory."

AT&T further asserts that Ameritech's plan does not account sufficiently for service mix differences. For example, installation intervals for complex business orders are likely to be substantially longer than installation intervals for single-line residence basic local service. Yet Ameritech proposes that it report average performance across all services, potentially masking poor performance in any individual area. For example, an average installation interval of ten days may be acceptable if 90% of the orders were complex business orders but wholly unacceptable if 90% of the orders were for basic single-line residential service. In fact, internal Ameritech performance reports separate performance data between residence and business. (Mickens, Tr. 1383; AT&T Cross Exhibit 11).

Similarly, AT&T points out that Ameritech's proposal fails to account for varying activity mixes. As a simple example, service repair where a premises visit is required will, on average, take more time than service repair that is remotely administered. A single restoration interval covering both scenarios likewise may result in deceptive performance results. Again, internal Ameritech reports acknowledge similar distinctions (Mickens, Tr. 1390-92; AT&T Cross Ex. 12). *See also* Pfau Supp. Testimony,, AT&T Ex. 3.1at 5-14.

For all of these reasons, AT&T concluded that it is far too premature to find that Ameritech has satisfied this checklist item especially in light of OSS's importance to effective market entry and Ameritech's disincentive to ensure their full implementation if it is granted interLATA authority now.

Sprint

Sprint agrees with Staff's view that the best way to evaluate whether Ameritech's OSS are functional is through actual use rather than sufficient internal testing by Ameritech. It asserts that it is far too premature to gauge whether Ameritech's OSS is operational.

Ameritech

Ameritech states that there are two key elements for purposes of determining whether it meets its OSS obligations. Ameritech Ex. 9.0 at 3. The first element, which it calls "operational readiness," is that the interfaces must be operational in the marketplace and/or have undergone sufficient testing to ensure that they will provide competitors with the requisite OSS-related capabilities. Id. Ameritech refers to the second element as "capacity readiness," which refers to sufficient capacity being built into the interfaces or the interfaces must be expandable on a timely

enough basis to respond to marketplace demand. Ameritech contends that its OSS interfaces meet these standards.

Ameritech introduced evidence describing the operational readiness of its interfaces. With respect to the pre-ordering interface, which is used for both resold services and unbundled network elements, Ameritech states that internal testing was completed for all applicable functions; including access to CSRs, telephone number selection and due date selection. The remaining two functions, address validation and feature availability, also have been tested, and have been up and running since February 1996. Id. at 27; Ameritech Ex. 8.0 at 18. With respect to the ordering, provisioning, repair and maintenance, and billing interfaces for unbundled network elements, Ameritech states that they were thoroughly tested before being put in commercial operation. Ameritech Ex. 9.0 at 7, 9. Ameritech further states that since April 1995 the ASR ordering interface has been used to process orders for unbundled loops. Id. at 7; AI Ex. 8.0 at 24. Ameritech further states that the provisioning interface, which provides firm order confirmations, has been processing live transactions since April 1996. Ameritech Ex. 9.0 at 7. It further asserts that the repair and maintenance interface currently is in use by AT&T and MCI and will soon be in use by Sprint, in connection with carrier access services. Id. at 8. Ameritech states that this interface has been up and running for almost two years. Ameritech Ex. 8.0 at 7-8. It states, however, that thus far competing providers of local service have not requested it, as they prefer to use a manual interface. Ameritech Ex. 9.0 at 8. Billing for unbundled loops has been provided through the Carrier Access Billing System ("CABS") since April 1995. Id. at 9. With respect to resold services, the interfaces have been subject to extensive internal testing and carrier to carrier testing. Id. at 10-11, 13-23. The resale ordering interface has been operational and in use by USN since February 1996. Ameritech Ex. 8.0 at 6, 24. In addition, during system testing with AT&T, live customer accounts have been converted to AT&T accounts. Ameritech Ex. 9.0 at 11. All three provisioning functions-firm order confirmation, order completion, and order status-are operational, and the first two are being used by USN. The repair and maintenance interface for resold services is the same interface used for unbundled network elements, and has not yet been requested by a local carrier. Id. at 11-12. The resale billing interfaces have been operational since February 1996, and have been used to send bills and daily usage feeds since April 1996. Id. at 12. Its interfaces are consistent with industry standards. Ameritech Ex. 8.0 at 6-9; Tr. 1053, 1090.

Ameritech provided additional information pertaining to the operational readiness of its OSS interfaces. It provided testimony stating that internal testing of the pre-ordering interface has been completed. Staff Cross-Ex. 3 (JEJ 3-6). Ameritech states that the pre-ordering interface underwent carrier-to-carrier testing with USN, and was implemented by USN, in January 1997. Tr. 1046-47. Ameritech avers that the resale ordering interface was tested by USN for about three months in 1996, and then implemented by USN. Tr. 686, 740-41, 1048-50. It states that the order status function of the resale provisioning interface became available on December 16, 1996, but, up to the present, no competing carrier has requested to test or use it. Tr. 1050. Ameritech notes that order status is not a separate interface, but just an additional transaction going over an existing interface. Tr. 1170. It states that the ASR ordering interface for unbundled network elements underwent carrier-to-carrier testing with MFS, and currently receives 1400 orders per month in Illinois from CCT and MFS, and responds with firm order confirmations. Staff Cross-Ex. 3 (JEJ 3-7 through 3-8).

On the issue of capacity, Ameritech argues that its interfaces have more than enough capacity to meet marketplace demand. Ameritech Ex. 9.0 at 28-44, Sch. 2. Ameritech explains that it planned capacity based on demand forecasts where competing carriers supplied them, and on aggressive market entry scenarios for non-responding carriers; as a result, the capacity required to serve large carriers like AT&T and MCI when they enter the market already is in place. AI Ex. 8.0 at 21-22; Ameritech 9.0 at 28-29, 32-35. Ameritech explains further that it planned capacity with at least a 6-month lead built-in, so there is enough capacity installed now to meet the projected demand for July 1997, and there will be enough capacity in July to meet demand in December.

Ameritech argues against application of Staff's proposed three-part test for OSS compliance. Ameritech Brief at 65-71. It asserts that Staff's proposed test reflects and implements its broader policy/legal view that all checklist items actually must be furnished to competing carriers on a commercial basis. Id. at 66. Thus, the grounds on which Ameritech opposes Staff's broader position are applicable in the OSS context as well. Id. In addition, Ameritech argues that Staff's three-part test constitutes an illegitimate expansion of the controlling FCC requirement that OSS interfaces be provided "upon request." Id. at 66-67 (citing First Report and Order, ¶ 525). Moreover, Ameritech argues, Staff's proposed test lacks well defined standards against which its efforts to comply could be measured; in particular, Staff offers no clear guidance for determining the point at which "each carrier" has been afforded a "reasonable opportunity" to design, implement and test the interfaces, and is "successfully utilizing" the interfaces on a "commercial scale." Id. at 67-69.

Finally, Ameritech argues that Staff's test is poor public policy because: (1) the requirement that "each carrier" be given the same "reasonable opportunity" in the OSS context clashes with Staff's willingness to accept a "mix and match" approach in other areas; (2) this same requirement will guarantee Ameritech's competitors a head-start in the "one-stop shopping" marketplace; and (3) Staff's approach renders Ameritech's checklist compliance completely dependent on the actions and good faith of its competitors -- even though Staff recognizes that carriers might not interface successfully with Ameritech's OSS for reasons wholly unrelated to its actions. Id. at 69-71.

With respect to AT&T's allegations, Ameritech responds that its interface specifications are well-defined and stable, and charges that AT&T fails to identify any specific deficiencies or material changes of the sort that would require competing carriers to redesign their systems just to maintain existing functionalities. Ameritech Brief at 72-74. It observes further that, beyond specifications, it provides competing carriers with training manuals, sends experienced personnel to provide "walk-throughs" of OSS processes, and offers to review the design and implementation of competing carriers' systems. Id. at 73-74. According to Ameritech, AT&T did not take full advantage of these opportunities. Id at 74.

Second, Ameritech takes exception to AT&T's examples of its alleged failure to comply with industry standards. Id. at 74-77. It states that USOCs are not defined by Ameritech, but by Bellcore, for use on a nationwide basis. Id. at 75. Third, in response to AT&T's charge that it refused to share its "business rules" in connection with 860 transactions, Ameritech cites to AT&T witness Connolly's concession on cross examination that, although he previously testified that Ameritech disclosed its approach to 860s only after AT&T sent its first 860 in October 1996, in fact, specifications issued by Ameritech in early August 1996 clearly laid out Ameritech's approach. Id. at 77. Fourth, regarding the testing with AT&T, Ameritech cites to Mr. Rogers'

analysis of the results, in particular the reasons for order rejections, which tend to show that the rejections were proper and not caused by Ameritech's side of the interface. Id. at 78-80. Ameritech also contends that the manual intervention rate is irrelevant to checklist compliance, because the checklist obligation is to provide electronic access to OSS functions, not fully electronic processing of all orders. Id. at 80. With respect to the processing of orders, the relevant inquiry is whether due dates are met on a parity basis.

COMMISSION CONCLUSION

Ameritech's provision of this item does not meet the standards we espoused earlier in Section II. C. of this order. The problem is clear – it is simply too early for us to determine whether the OSS will operate properly. We are not convinced that the internal testing performed by Ameritech can solve all of the problems that will arise. Without actual testing with other carriers, this checklist item cannot be available. We agree with Staff that we must be provided with empirical evidence that Ameritech's OSS are operational and functional.

We are especially concerned with the problems described in the testimony of CCT witness Scott Jennings, which indicates that CCT is experiencing difficulty advising customers about the status of repairs and that it was still experiencing problems.

Meeting this checklist item requires more than Ameritech having its side of the interface operational. In order to meet the checklist, Ameritech must ensure the connecting carriers have sufficient information of Ameritech's OSS, including working with carriers that experience rejected orders and/or orders that require manual intervention.

Ameritech must also show that carriers are able to utilize Ameritech's OSS in a sufficient manner that will accommodate the demand of a new LEC's services by end users. At thus point we are not convinced that carriers will be able to offer its services to the general public with the expectation that all service orders will be processed.

b. Network Interface Devices

Ameritech

Ameritech contends that its Network Interface Device ("NID") offering fully satisfies the requirements of the Act and the FCC's regulations. NIDs serve as the point of connection between an Ameritech loop and an end user's inside wire. They also serve to provide lightening protection to the Ameritech loop. FCC regulation requires that Ameritech permit requesting carriers to access end user inside wire through a connection between their own NIDs and those of Ameritech. 47 C.F.R. § 51.319(b).

Ameritech notes that no party challenged its provision of NIDs as a network element during this proceeding. Upon request, it permits requesting telecommunications carriers to access end user customers' inside wires through the Ameritech NIDs. A requesting carrier may do so by installing NIDs at the end of its own loops connecting it to the Ameritech NIDs. Although thus far no party has requested access to Ameritech's NIDs on an unbundled basis, Ameritech provides such access through its interconnection agreements with MFS and CCT. Ameritech Ex. 2.2, Schedule 2.